

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
March 29, 2006 Session

**CHRISTINE ELTRIEDE RICKETTS**  
**v.**  
**DAVID HAROLD RICKETTS**

**An Appeal from the Chancery Court for Montgomery County**  
**No. 96-07-0047     Carol A. Catalano, Chancellor**

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**No. M2005-00022-COA-R3-CV - Filed on October 3, 2006**

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This case involves an alimony award. The parties were married in 1986 when they were both forty-four (44) years old. No children were born of the marriage, but the parties adopted the wife's grandson. In 1996, the parties agreed to a legal separation. The wife was given sole custody of the grandson, and the husband paid support. Seven years later, the husband filed a petition for an absolute divorce. After a trial, the wife was awarded a legal separation and \$250 per month in transitional alimony for two years. The wife now appeals, claiming that the trial court erred in denying her request for alimony *in futuro*. In light of the deference accorded to the trial court on issues of spousal support, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Affirmed**

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which DAVID R. FARMER, J., and DONALD P. HARRIS, SR. J., joined.

Christine Zellar Church, Clarksville, Tennessee, for the appellant, Christine Eltriede Ricketts.

Larry B. Watson, Clarksville, Tennessee, for the appellee, David Harold Ricketts.

**OPINION**

Plaintiff/Appellant Christine Eltriede Ricketts ("Wife") and Defendant/Appellee David Harold Ricketts ("Husband") were married on June 3, 1986, when the parties were both forty-four years old. No children were born of the marriage, but the parties adopted Wife's biological grandson, Joseph Matthew Denney Ricketts ("Matthew"), born December 8, 1989. Matthew is not biologically related to Husband.

On July 11, 1996, Wife filed a complaint for divorce from bed and board against Husband. On October 31, 1996, the parties separated and filed a marital dissolution agreement ("MDA").

Under the MDA, Wife was granted custody of Matthew, and Husband paid Wife all of the monies he received from his military retirement and the Veterans Administration (“VA”), which at the time totaled \$1,116 per month. This amount was to “constitute child support, plus allow [Wife] sufficient income to pay the debts of the parties.” The debts, according to the MDA, were the insurance on the parties’ vehicles (no amount stated), \$10,500 in credit card debt, and the mortgage on the parties’ “double-wide” mobile home and land, which was \$365 per month. The case lay dormant for seven years, and Husband paid support as outlined in the MDA.

On December 31, 2003, Husband filed an answer to Wife’s complaint for divorce from bed and board. In his answer, Husband asked that Wife’s complaint for bed and board be denied and that he be granted an absolute divorce. In order to conform to a change in the law during the parties’ separation, Wife filed an amended complaint for a legal separation. In the amended complaint, Wife sought permanent alimony.

The parties filed an agreed permanent parenting plan, settling issues related to the care and support of Matthew. The parties also agreed on a division of the marital property, with Wife receiving the marital residence and the mortgage on it, as well as the vehicle and property in her possession. Husband was to receive the vehicle in his possession and the residence, four-wheeler, and boat he purchased after the parties’ separation.

The trial was held on November 16, 2004. At that time, both parties were sixty-three years old and not employed. Both Wife and Husband testified at trial.<sup>1</sup>

Wife testified about the parties’ adopted son, Matthew, who was almost fifteen years old and in the eighth grade at the time of trial. He had been diagnosed with ADHD. Because of his ADHD, Matthew has problems concentrating and paying attention in school, and he has poor impulse control, which has resulted in discipline issues. Wife testified that she took Matthew to see a psychiatrist in Fort Campbell once a month, and the psychiatrist prescribed medication for Matthew’s condition. Once a week, Wife took Matthew to group therapy at Fort Campbell. Wife testified that she talks to Matthew’s teachers at least once each week. The parties both testified that Wife attends to all of Matthew’s daily needs, and Husband sees Matthew infrequently, about once a year during the summer.

Regarding the financial issues related to Matthew, Wife testified that Matthew has had unexpected expenses, such as braces costing over \$3,000, for which Wife paid without any additional assistance from Husband. The \$155 per month expense for Matthew’s medications and therapy sessions had been covered by Husband’s military medical care.

Wife testified that she had not been employed outside the home since she and Husband were married in 1986. Husband, however, testified to the contrary. He said that after they were first

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<sup>1</sup>The record does not include a transcript of the trial, but Wife filed a Statement of the Evidence pursuant to Rule 24(c) of the Tennessee Rules of Appellate Procedure.

married, Wife was self-employed and cleaned houses, and later provided child care for other parents on occasion. He testified that, after the parties separated in 1996, Wife kept two children in her home for three years, earning between \$40 and \$55 per week.

Wife testified that she suffers from Crohn's disease and has arthritis in her hands which prevents her from closing her fist completely. She said that she has circulation problems in her legs and cannot stay on her feet for long periods of time. When asked by the trial judge if she could provide child care in her home, Wife answered that she did not think she could keep children in her home now because of her nerves, the circulation problems in her legs, and the arthritis in her hands. She also noted that Matthew needs her help after school with his homework, and he needs transportation to his group therapy appointments after school once per week. Wife testified that it is nearly all she can do to keep up with the house and the yard.

Wife introduced an income and expense statement at trial. She testified that Husband was sending her \$400 per month in child support, as well as voluntary alimony payments of \$561 per month. Wife was receiving survivor's social security benefits for Matthew due to the death of his father, Wife's son, in the amount of \$475 per month. Wife had been receiving an additional amount as a survivor's benefit, but that amount was not included on her income statement because the payments were to stop on Matthew's fifteenth birthday, shortly after the trial. Thus, Wife's total monthly income at the time of trial was \$1,436.

Regarding her expenses, Wife testified that she pays a \$365 per month mortgage on the parties' mobile home, with thirteen years left on the mortgage, not including homeowner's insurance or property taxes. Wife stated that her average water bill was \$25 per month, average electric bill was \$250 per month, and average phone bill was \$47 per month. The cable television, which she said she gets for Matthew, was \$51 per month. Wife stated that she has a 1994 Buick Skylark, and she typically spends \$150 per month on gasoline, oil changes, and repairs. She said she pays \$144.53 per month for car insurance and house insurance. Wife testified that she pays approximately \$175 per month on the parties' joint credit card debt, and \$50 per month on a credit card that is in her own name and is not marital debt. Wife said that Matthew's medical and dental expenses are \$54 per month. Wife testified that, while she was responsible for Matthew, her total monthly expenses averaged \$1,777.53 per month, exceeding her monthly income by \$341.53.

Wife testified about anticipated changes to her income and expenses due to her advancing age and Matthew's emancipation. She submitted a second income and expense statement illustrating her projected financial condition after Matthew graduates from high school and she no longer receives child support. Wife stated that, at the time of trial, she was eligible to draw social security benefits at a reduced rate of about \$300 per month. At age sixty-five, she could begin drawing social security on her previous husband's work record in the amount of \$700 per month.<sup>2</sup> From this amount, Wife would have to pay her mortgage of \$365 per month for eight more years, as well as

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<sup>2</sup> Apparently, Wife's receipt of this amount would be contingent on the parties' legal separation being converted to an absolute divorce.

the marital debt and other living expenses. Thus, according to Wife's calculations, even after the mortgage on the mobile home was paid in full, her expenses would exceed her income by several hundred dollars per month.<sup>3</sup>

Husband also testified at trial. He stated that he retired from the military in 1992 after twenty years of active duty service. He has been diagnosed with problems in his back, his shoulder, his leg, and his hip. Husband said he waived 30% of his military retirement benefits in order to receive VA disability benefits. Since qualifying for VA disability, Husband's physical condition has worsened. He was also receiving social security disability benefits. Thus, Husband's total monthly income at the time of trial was \$2,275, comprised of VA disability benefits (\$315), military retirement benefits (\$961), and social security disability benefits (\$999). Husband denied having income from any other sources. Husband's monthly expenses, he stated, totaled \$839 per month, and there was no dispute as to the reasonableness of his expenses.

Husband testified that he has a life insurance policy with a face value of \$100,000. The parties were unable to agree on whether Husband should be required to name Wife as the beneficiary on the policy to secure any child support and alimony obligations. If Husband should die, it was unclear whether Matthew could draw survivor's benefits on both his biological father and his adopted father at the same time.

Wife conceded that, under the 1996 MDA, she had agreed to make payments on the parties' \$10,500 joint credit card debt out of the retirement checks she received from Husband. By the time of trial, however, while Wife had transferred the balances to other credit cards to obtain a more favorable interest rate, the principal balance was not reduced. Exhibits were entered to show a cumulative balance of \$11,865 due on the credit cards. Wife acknowledged that she had made only minimum payments toward the parties' credit card debt. The parties agreed that Wife had consistently paid Husband's truck insurance, as well as \$5,000 in medical bills resulting from Husband's cardiac condition.

On December 10, 2004, the trial court entered a final decree of legal separation, granting Wife a legal separation and making permanent the orders concerning other issues, including alimony.<sup>4</sup> The trial court adopted the parenting plan submitted by the parties, which required Husband to pay Wife \$400 per month in child support until Matthew turns eighteen or until he graduates with his class in May 2009, whichever is later.

In the order, the trial court evaluated Wife's need for the alimony and Husband's ability to pay. At the outset, the trial court noted, "The fact that these parties married in 1996 does not make

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<sup>3</sup>Wife testified that Husband's military medical benefits cover the medication for her various medical conditions. Should the trial court award a divorce, she stated, she would no longer qualify for any military medical benefits. However, Wife would be eligible for Medicare upon reaching age sixty-five on June 20, 2006.

<sup>4</sup>The trial court granted a legal separation rather than an absolute divorce because, if the parties were divorced, Wife would no longer be entitled to military medical benefits.

[Husband] responsible for [Wife's] support until the day she dies. . . . This is not really an eighteen year marriage, it is a ten year marriage." It found that Husband's "ailments exceed [Wife's] ailments because they have been formally recognized" by the Social Security Administration in the award of social security benefits to Husband. Mindful that Wife's expenses may exceed her income, the trial court indicated that Wife might have to obtain employment to meet those expenses. The trial court stated that "[t]here is no evidence in the record that [Wife] could not obtain income from providing daycare for other children," and remarked that Wife may have to keep children in her home or find other employment "in order to survive." The trial judge commented, "If you want to pay for things, you have to work."

The trial court made specific findings of fact as to the parties' income and expenses. On Wife's income, it determined that Wife was entitled to \$145 of Husband's monthly military pension as marital property and \$475 per month from Matthew's social security benefits. When added to the \$400 per month she received in child support, Wife would have a total income of \$1,020 per month until she reaches age sixty-five. At that time, the trial court found, Wife would receive an additional amount of \$700 per month in social security benefits from her former husband's work record. Regarding Wife's expenses, the trial court found many of her claimed expenses to be unreasonable. It determined that her calculation of gas, oil and repairs of \$150 per month was excessive, and reduced this figure to \$50 per month.<sup>5</sup> It observed that her medical and dental expenses have been reduced from \$155 per month to \$55 per month. The trial court further found that Wife's claimed "other expenses" in the amount of \$380 per month were excessive. The trial court determined that Wife's reasonable monthly expenses for herself and Matthew should total no more than \$1,250. Thus, the trial court determined that, until she reaches age sixty-five, Wife's income would exceed her expenses by approximately \$230. It found that Husband's monthly income was \$2,056, comprised of VA disability benefits (\$315), military retirement benefits (\$816) (the original \$961, minus \$145 to Wife), and social security disability benefits (\$925). His monthly expenses were \$400 in child support plus the \$839 in other claimed expenses, leaving him with disposable monthly income of \$817.

Based on these findings, the trial court awarded Wife \$250 per month in transitional alimony for two years, until November 2006, at which time she would be eligible to receive an additional \$700 per month in social security benefits after the legal separation is converted to an absolute divorce.<sup>6</sup> The trial court found that rehabilitative alimony was not feasible because there was "no vocational education which could make [Wife] more employable." The trial court rejected Wife's request for alimony *in futuro* and her suggestion that her need for alimony be reviewed again in 2009 when she stops receiving Matthew's child support and social security benefits. The trial court ordered Husband to make Wife the beneficiary of his life insurance policy for the following two years in the amount of \$25,000 as security for the alimony and child support. The trial court

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<sup>5</sup>The trial court did not elaborate on how it calculated Wife's automobile expenses for transporting herself and Matthew to be no more than \$50 per month.

<sup>6</sup>Wife turned sixty-five years old in June 2006.

remarked that Wife should have paid the \$10,500 in marital credit card debt during the eight years of the parties' separation, and therefore deemed it appropriate to award all of the outstanding credit card debt to Wife. The trial court divided the other marital property in accordance with the agreement of the parties. From this order, Wife now appeals.

On appeal, Wife argues that the trial court erred in refusing to grant her alimony *in futuro* based on her need for the alimony, Husband's ability to pay, and all the other statutory factors relevant to the issue. Wife argues that alimony *in futuro*, rather than transitional alimony, was appropriate in this situation because the trial court determined that she could not be rehabilitated.

The trial court's factual findings are reviewed *de novo* on the record, presuming those findings to be correct unless the evidence preponderates otherwise. **Bratton v. Bratton**, 136 S.W.3d 595, 605 (Tenn. 2004); T.R.A.P. 13(d). The trial court's conclusions of law are reviewed *de novo*, with no presumption of correctness. **Helton v. Helton**, No. M2005-00268- COA-R3-CV, 2006 WL 461041, at \*2 (Tenn. Ct. App. Feb. 24, 2006). The trial court is granted broad discretion to determine whether spousal support is required and, if so, the nature, amount, and duration of such support. **Bratton**, 136 S.W.3d at 605. Consequently, this Court is not inclined to alter the trial court's spousal support decision unless an incorrect legal standard was applied or the decision reached was clearly unreasonable. *See Bogan v. Bogan*, 60 S.W.3d 721, 733 (Tenn. 2001). We must give great weight to decisions based on the trial court's assessment of the credibility of the witnesses, and we will not reverse such an assessment absent clear and convincing evidence to the contrary. **Smith v. Smith**, 93 S.W.3d 871, 875 (Tenn. Ct. App. 2002).

Tennessee recognizes four types of spousal support: alimony *in futuro*, alimony *in solido*, rehabilitative alimony, and transitional alimony. *See* T.C.A. § 36-5-101(d)(1) (Supp. 2004). Each type of alimony addresses different needs of an economically disadvantaged spouse. Transitional alimony, the type of alimony awarded to Wife in the instant case, is appropriate when the court finds that, although rehabilitation is not feasible, the economically disadvantaged spouse needs time and assistance to adjust to the economic consequences of divorce.<sup>7</sup> *See Simmons v. Simmons*, No. M2005-00348-COA-R3-CV, 2006 WL 236904, at \*3 (Tenn. Ct. App. Jan. 31, 2006). Rehabilitative alimony is awarded to enable an economically disadvantaged spouse to acquire additional education or training so as to allow them to reach an appropriate standard of living, as compared to the standard of living enjoyed during the marriage. *See Robertson v. Robertson*, 76 S.W.3d 337, 340-42 (Tenn. 2002). Alimony *in futuro* is generally intended to provide long-term support to an economically disadvantaged spouse who cannot be rehabilitated. **Burlew v. Burlew**, 40 S.W.3d 465, 471 (Tenn. 2001). Section 36-5-101(d)(1) of the Tennessee Code reflects a preference for an award of rehabilitative or transitional alimony to alimony *in futuro*. *See* T.C.A. § 36-5-101(d)(1) (Supp.

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<sup>7</sup>Though the statute was not effect as of the time of the trial in this case, transitional alimony is defined in Tennessee Code Annotated § 36-5-121(g)(1) as "a sum of money payable by one (1) party to, or on behalf of, the other party for a determinate period of time . . . when the court finds that rehabilitation is not necessary, but the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce, legal separation or other proceeding where spousal support may be awarded . . . ." T.C.A. § 36-5-121(g)(1) (2005); *see* T.C.A. § 36-5-101(d)(1)(D) (Supp. 2004).

2004). Despite the statutory preference, alimony *in futuro* should be awarded when long-term support is found to be more appropriate under the facts of a given case. *Aaron v. Aaron*, 909 S.W.2d 408, 410 (Tenn. 1995).

There are no hard and fast rules for spousal support decisions. *Manis v. Manis*, 49 S.W.3d 295, 304 (Tenn. Ct. App. 2001). Each case involves a fact-intensive inquiry and must be decided based on its own set of facts and circumstances. *Robertson*, 76 S.W.3d at 338. In making a determination regarding spousal support, “[a] trial court must consider every relevant factor in Tennessee Code Annotated section 36-5-101(d)(1)(E) (2001) to determine the nature and extent of support.” *Bratton*, 136 S.W.3d at 604. The statutory factors are:

- (i) The relative earning capacity, obligations, needs, and financial resources of each party including income from pension, profit sharing or retirement plans and all other sources;
- (ii) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party’s earning capacity to a reasonable level;
- (iii) The duration of the marriage;
- (iv) The age and mental condition of each party;
- (v) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
- (vi) The extent to which it would be undesirable for a party to seek employment outside the home because such party will be custodian of a minor child of the marriage;
- (vii) The separate assets of each party, both real and personal, tangible and intangible;
- (viii) The provisions made with regard to the marital property as defined in § 36-4-121;
- (ix) The standard of living of the parties established during the marriage;
- (x) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
- (xi) The relative fault of the parties in cases where the court, in its discretion, deems it appropriate to do so; and
- (xii) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

Tenn. Code Ann. § 36-5-101(d)(1)(E) (Supp. 2004).<sup>8</sup> The two most important factors to consider are the need of the disadvantaged spouse and the obligor spouse's ability to pay. *Bratton*, 136 S.W.3d at 604.

In this case, Wife claims that the trial court erred in rejecting her request for an award of alimony *in futuro*, because it found specifically that rehabilitation was not feasible. If rehabilitation is not feasible, Wife argues, the issue becomes whether she was entitled to alimony *in futuro* based on the other factors in Section 36-5-101(d), particularly her need for the alimony and Husband's ability to pay. Wife claims that the evidence demonstrated that her monthly expenses exceed her income by hundreds of dollars, and that Husband has the means to pay alimony because he has a monthly surplus of over \$800. The trial court erred, Wife argues, in reducing her "need" for alimony by arbitrarily finding that the amount of her claimed expenses was unreasonable. She further argues that the trial court erred in viewing the duration of the marriage as ten years, and not eighteen, ignoring the years between the 1996 filing of the parties' MDA and the November 2004 trial. Wife also contends that the trial court's failure to award her alimony *in futuro* violates the public policy of Tennessee recognizing the contributions of a spouse who focuses on homemaking and nurturing children as being equally as important as the contributions of the spouse who focuses on building the economic strength of the family unit. *See* T.C.A. § 36-5-101(d)(1)(A) (Supp. 2004). Wife states that "[i]t is undisputed that throughout this eighteen year marriage the Wife has been the homemaker and the Husband has been the economic provider." Wife notes that she has been the sole caretaker of Matthew since 1996. It is undisputed that Matthew has had significant problems requiring a great deal of time and attention by Wife. Furthermore, Wife argues, she paid for Matthew's \$3,000 braces and for Husband's \$5,000 in medical bills with no additional assistance from Husband. Requiring her to get a job, Wife argues, severely limits her ability to work with Matthew to ensure his success as a healthy and productive adult. On appeal, Wife does not directly challenge the amount of the award of transitional alimony; rather, she argues that she should have been awarded that amount of alimony permanently, emphasizing that, after child support ends, her expenses will exceed her income by several hundred dollars. Because Husband has a surplus of over \$800 each month, Wife argues, he should be required to pay her the "\$757.13 per month she needs to make ends meet."

Wife cites *Miller v. Miller*, No. M2002-02731-COA-R3-CV, 2003 WL 22938950 (Tenn. Ct. App. Dec. 10, 2003), to support her argument that she should receive alimony *in futuro* in light of her age and her inability to be rehabilitated. In *Miller*, the parties had been married to each other twice, the second time for about ten years. They divorced the second time when the wife was sixty-four years old and the husband was age fifty-seven. Both had worked during the marriage, but in 1999 the parties had agreed that the wife would retire at age sixty-two. When the parties separated about two years after that, the husband was still earning a salary of about \$50,000 per year, while the wife received only social security benefits of \$573 per month. The wife suffered from various illnesses, including a failed stomach stapling, pancreatitis, hypothyroidism, and irritable bowel syndrome. The trial court determined that the wife was incapable of economic rehabilitation because of her age and her physical condition and awarded her \$700 per month in alimony *in futuro*. The

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<sup>8</sup>These factors are now found in Tennessee Code Annotated § 36-5-121(i) (2005).



husband appealed, claiming that the wife did not need permanent alimony because her expenses were low and because of the statutory preference for rehabilitative alimony. The appellate court affirmed the trial court's award of permanent alimony, stating:

[W]e conclude that the evidence does not preponderate against the trial court's finding. To find otherwise, we would have to turn a blind eye to the realities of the modern workplace in order to find that a sixty-four year old woman who is not in the best of health, and who possesses limited skills, would be able to re-enter the workforce after an absence of a number of years, and obtain a job that pays her a living wage. Under the circumstances present in this case, we agree with the trial court that the wife is not capable of rehabilitation.

*Id.* at \*4. The *Miller* court also relied on the trial court's "broad discretion to determine whether spousal support is needed and, if so, its nature, amount and duration" and noted its reluctance to second-guess such decisions. *Id.* at \*5. Wife argues that the analysis in *Miller* applies in the instant case.

In response, Husband argues that it is undisputed that he and Wife have not lived as a married couple since 1996, and that the trial court was correct in treating this as a ten-year marriage. He contends that Wife has had since 1996 (when she was fifty-five years old) through the date of the divorce to improve her financial condition by seeking gainful employment, but she has made no effort to do so. Husband notes that there was no competent medical testimony supporting Wife's contention that she could not work, only her testimony. He argues that the evidence supports the trial court's conclusion that his physical challenges exceed those of Wife in that his disability has been formally recognized, as well as the trial court's conclusion that his ability to pay is hindered by the fact that he is on a fixed income with no means of increasing his wealth. Thus, Husband asserts, since Wife has the ability to improve her situation, but he does not, he is actually the disadvantaged spouse, not Wife. Therefore, Husband argues, Wife is not entitled to alimony *in futuro*.

At the outset, we reject Wife's contention that the trial court erred in considering this to be a marriage of ten years, and not eighteen. Since 1996, the parties operated under the terms of the MDA, with no discussion of reconciliation. It is apparent that the only reason the parties did not obtain an absolute divorce at that time was because Wife would no longer be entitled to receive Husband's military medical benefits. Under these circumstances, we find that the trial court was correct in treating this as a ten-year marriage. Courts have considered marriages of five, seven, and eight years to be of relatively "short" duration. *Batson v. Batson*, 769 S.W.2d 849, 859-60 (Tenn. Ct. App. 1988) (five years); *Derryberry v. Derryberry*, No. 03A01-9801-CV-00023, 1999 WL 486863, at \*4-\*5 (Tenn. Ct. App. July 13, 1999) (seven years); *Spencer v. Spencer*, No. 01-A-019109CV00328, 1992 WL 247641, at \*3 (Tenn. Ct. App. Oct. 2, 1992) (eight years). Though this was a ten-year marriage, the parties were of mature years when they married, and the marriage cannot be considered to be of exceptionally long duration.

Next we address Wife's assertion that her inability to work, coupled with the trial court's finding that rehabilitation was not feasible, means that she should have been awarded alimony *in futuro* instead of transitional alimony. While the trial court in fact concluded that rehabilitation for Wife was not feasible, it is clear that the trial court simply did not buy Wife's claim that her physical condition precludes her from any gainful employment. Wife's claims regarding her physical condition were based only on her testimony, without corroborating medical or other evidence. Therefore, the trial court's rejection of this contention was an implicit finding that Wife's testimony on this issue was not credible. In the absence of clear and convincing evidence to the contrary, we must defer to the trial court's assessment of the witnesses' credibility. *Smith*, 93 S.W.3d at 875. Under these circumstances, we cannot conclude that the trial court erred in finding that Wife had the physical ability to earn additional income.

The statutory factors implicated in this argument are (1) the relative earning capacity and resources of both parties, (2) the duration of the marriage, (3) the age of the parties, (4) the physical condition of the parties, and (5) the extent to which it would be undesirable for a party to seek employment outside the home because such party is the custodian of a minor child of the marriage. T.C.A. § 36-5-101(d)(1)(i), (iii), (iv), (v), and (vi) (Supp. 2004). The evidence at trial showed that, with respect to earning capacity, Wife has the greater earning capacity because Husband is disabled and cannot work, whereas Wife is able to earn at least some extra income. Husband has greater resources, however, because he receives military retirement and other benefits. The trial court considered this to be a ten-year marriage, and the parties' ages are about the same, both sixty-three years old at the time of trial. Although both suffer from various physical ailments, Husband's disability has been formally recognized. Therefore, this factor weighs against requiring Husband to pay Wife permanent alimony. As to the final factor, Wife's status as Matthew's caretaker makes it more difficult for her to seek full-time employment outside the home. However, Matthew will be almost seventeen years old by the time the transitional alimony payments cease. Additionally, the trial court found that, even with Matthew's "extraordinary condition, [Wife] does not have to tend to him any more than any other parent."

The instant case presents an unfortunate situation because both parties are approaching the age of retirement, but neither has accumulated significant wealth. The parties married when they were both forty-four years old, and both presumably were self-sufficient at that time. Before and during the marriage, Husband continued his career in the military and ultimately earned the right to his retirement benefits in 1992 after twenty years of active duty service. During the marriage, Husband was the sole financial support for Wife and Matthew, except for a time when Wife cleaned houses for income. After the separation in 1996, Husband continued to support Matthew and gave Wife money to pay the marital debt. For three years, Wife kept children in her home to supplement her income, but she then stopped working and chose to live solely on the support payments she received from Husband and Matthew's social security benefits. The trial court rejected Wife's request to require Husband to support her permanently, remarking that their marriage of ten years "does not make [Husband] responsible for [Wife's] support until the day she dies." Giving due deference to the trial court's broad discretion on issues related to spousal support, we cannot

conclude that the trial court erred in deciding to award transitional alimony for two years rather than alimony *in futuro*.

Although Wife compares her situation to that of the disadvantaged wife in *Miller v. Miller*, *supra*, there are substantial differences. In *Miller*, there was great disparity in the parties' relative ability to bring in income, as the husband earned about \$50,000 per year, about "seven times as much" as the wife's \$6,876 per year in Social Security benefits. The *Miller* court noted that the husband was fifty-seven years old and could "continue to work and generate a good income for a number of years." The court also contrasted the parties' lifestyles, observing that the husband "lives in a three-bedroom house while she is in a one-bedroom government-subsidized apartment." Furthermore, the appellate court in *Miller* was reviewing a *grant* of alimony *in futuro*, and affirmed in light of the deference that is due to the trial court's decision on such issues. Thus, the holding in *Miller* does not compel an award of alimony *in futuro* to Wife under the circumstances of this case.

All other issues raised in this appeal are pretermitted.

The decision of the trial court is affirmed. Costs on appeal are to be taxed to Appellant Christine Eltriede Ricketts and her surety, for which execution may issue, if necessary.

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HOLLY M. KIRBY, JUDGE